S.B.CRIMINAL LEAVE TO APPEAL NO.196/2006
(Firm Data Chmicals Vs. Rakesh)

Date of order : 11.9.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Ms. Pramila Acharya, for the appellant.
Mr. C.S. Kotwani, for the respondent.

Heard learned counsel for the parties.

In the present leave to appeal, the appellant is seeking leave to file appeal against the judgment dated 20.1.2006 passed by Addl. Sessions Judge No.1, Sri Ganganagar in Criminal Appeal No.33/2005 whereby the appellate Court has set aside the judgment dated 1.6.2004 passed by Judicial Magistrate, Sri Ganganagar in Criminal Case No.712/2002.

According to the facts of the case, a complaint was filed by complainant-appellant before Judicial Magistrate, Sri Ganganagar against the respondent for offence under Section 138 of NI Act wherein it was alleged that appellant and respondent was having business relations and during one of the transactions, the respondent gave a cheque bearing No.0590280 of Central Bank of India, Branch Fatehbad, Haryana dated 30.5.2001 amounting to Rs.4,53,500/-. According to the complaint, this cheque was given in lieu of purchase of seeds and pesticides made by the

respondent. It was alleged in the complaint that cheque was submitted before the Bank but the same was dishonoured and received back with endorsement "exceeds arrangements". This information was given by the Bank vide memo dated 1.6.2001. Thereafter, a legal notice was given by the appellant on 15.6.2001 and reply thereto was given by the respondent on 23.6.2001 wherein he has refuted the allegations with regard to any purchase of seeds and pesticides from the appellant. It was also replied that no cheque which is in question was given to the appellant-firm. It was also mentioned in the reply by the respondent that he has given a cheque to one Sushil Kumar of Sri Ganganagar.

The trial Court upon complaint proceeded for trial and finally convicted the respondent for offence under Section 138 of NI Act and sentenced him to undergo one and half year SI along with compensation of rupees six lacs vide order dated 1.6.2004.

Against the aforesaid order dated 1.6.2004, the respondent preferred an appeal before Sessions Court which later on was heard by Addl. Sessions Judge No.1, Sri Ganganagar. The appellate Court vide its order dated 20.1.2006 while setting aside the order dated 1.6.2004 acquitted the respondent for offence under Section 138 of NI Act. Against which, this leave to appeal has been filed by the appellant-firm.

It is contended by the learned counsel for the appellant that the judgment dated 20.1.2006 is not based on correct appreciation of material on record so also the learned appellate Court has committed an error while acquitting the respondent on the ground that memo of the Bank produced by the complainant does not bear cheque number and amount. It is further contended that the finding of the appellate Court is contrary to the facts available on record because throughout the trial the accused neither raised any defence that the cheque in question is not dishonoured nor gave any suggestion to this effect in the reply dated 23.6.2001, therefore, the appellate Court has passed the judgment on the basis of surmises and conjectures. Thus, the judgment passed by the appellate Court deserves to be quashed. There is evidence on record on which the trial Court has convicted the respondent but all these aspects of the matter were not considered by the appellate Court in correct perspective.

Learned counsel for the respondent vehemently argued that the appellate Court has rightly arrived at with the finding that the prosecution has failed to prove its case beyond reasonable doubt. He has invited the attention of this Court towards the fact that cheque was admittedly issued according to the allegation on 30.5.2001, which is Ex.P/2. Similarly,

the Bank communication for refused of payment is dated 1.6.2001 at Fatehbad Branch. This fact itself is sufficient to arrive at with the finding that the prosecution case is doubtful.

I have perused both the orders passed by courts below as also the record of the case.

Upon perusal of Ex.P/3 communication of the Bank dated 1.6.2001, it is clear that it does not bear any bank account or cheque number, therefore, now it can be an evidence for dishonour of cheque in question. Likewise, the reason for dishonouring of cheque is not shown as 'insufficient fund' or 'stop payment' by drawer. Therefore, it is obvious from document Ex.P/3, which does not bear any cheque number, that the prosecution has failed to prove its case beyond reasonable doubt. Thus, for the reasons mentioned above, the appellate Court has rightly arrived at with the finding that the prosecution has failed to prove its case beyond reasonable doubt. Thus, in my opinion, there is no ground to grant any leave to file appeal in this case. Accordingly, this criminal leave to appeal filed by the appellant is dismissed.

(GOPAL KRISHAN VYAS), J .

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